**South Carolina General Assembly**

122nd Session, 2017-2018

**H. 3948**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Erickson, Collins, Bernstein, Robinson‑Simpson, Yow, Willis, Spires, Hosey, Jefferson, Alexander and Clemmons

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Companion/Similar bill(s): 560

Introduced in the House on March 7, 2017

Currently residing in the House Committee on **Judiciary**

Summary: Family Court jurisdiction

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/7/2017 House Introduced and read first time ([House Journal‑page 98](file:///h:\hj\20170307.docx))

3/7/2017 House Referred to Committee on **Judiciary** ([House Journal‑page 98](file:///h:\hj\20170307.docx))

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**VERSIONS OF THIS BILL**

[3/7/2017](file:///p:\pprever\2017-18\3948_20170307.docx)

**A** **BILL**

TO AMEND SECTION 23‑3‑430, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SEX OFFENDER REGISTRY, SO AS TO GIVE FAMILY COURTS THE DISCRETION WHETHER TO REQUIRE A CHILD FOURTEEN YEARS OR OLDER TO BE PLACED ON THE REGISTRY, TO PROHIBIT FAMILY COURTS FROM PLACING A CHILD UNDER FOURTEEN YEARS ON THE REGISTRY, AND TO ALLOW PERSONS REQUIRED TO BE PLACED ON THE REGISTRY TO PETITION THE COURT FOR REMOVAL UPON REACHING TWENTY‑ONE YEARS OF AGE; TO AMEND SECTION 23‑3‑490, AS AMENDED, RELATING TO PUBLIC INSPECTION OF SEX OFFENDER REGISTRY RECORDS, SO AS TO LIMIT PUBLIC ACCESS TO VICTIMS, WITNESSES, SCHOOLS, CHILDCARE FACILITIES, AND OTHER BUSINESSES THAT PRIMARILY SERVE CHILDREN, WOMEN, OR VULNERABLE ADULTS; AND TO AMEND SECTION 63‑3‑510, AS AMENDED, RELATING TO FAMILY COURT JURISDICTION OVER CHILDREN, SO AS TO RETAIN JURISDICTION TO REVIEW PETITIONS FOR REMOVAL FROM THE SEX OFFENDER REGISTRY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 23‑3‑430 of the 1976 Code, as last amended by Act 7 of 2015, is further amended by adding appropriately lettered subsections at the end to read:

“( ) Notwithstanding subsection (A), a child fourteen years of age or older who has been adjudicated delinquent by a family court in this State for an offense described above, or who has been adjudicated delinquent in a comparable court in the United States or a foreign country, or who has been adjudicated delinquent by a court of competent jurisdiction for an offense for which the person was required to register in the state where the adjudication occurred, may be required to register pursuant to the provisions of this article. The family court shall use its discretion to determine whether a juvenile is placed on the sex offender registry and required to comply with registration requirements. In making this determination, the court shall consider:

(1) the likelihood the juvenile will reoffend, based on a risk assessment or an evaluation by a mental health professional;

(2) the age of the juvenile at the time of the offense;

(3) mitigating factors;

(4) aggravating factors including, but not limited to, use of force or weapons; and

(5) other factors the court considers relevant.

( ) A child under the age of fourteen must not be required to register as a sex offender pursuant to the provisions of this article.

( ) A person who before or after the effective date of this subsection is required by the family court to register as a sex offender pursuant to this section may petition the family court, after turning twenty‑one years old, for an order to remove the person from the sex offender registry and relieve the person from the requirements for registration. In considering the petition, the court shall consider:

(1) the likelihood the petitioner will reoffend, based on a risk assessment or an evaluation by a mental health professional;

(2) the age of the petitioner at the time of the offense;

(3) mitigating factors;

(4) aggravating factors including, but not limited to, use of force or weapons; and

(5) other factors the court considers relevant.”

SECTION 2. Section 23‑3‑430(A) of the 1976 Code is amended to read:

“(A) ~~Any~~ A person, regardless of age, residing in the State of South Carolina who in this State has been convicted of, ~~adjudicated delinquent for,~~ pled guilty or nolo contendere to an offense described below, or who has been convicted, ~~adjudicated delinquent,~~ pled guilty or nolo contendere, or found not guilty by reason of insanity in any comparable court in the United States, or a foreign country, or who has been convicted, ~~adjudicated delinquent,~~ pled guilty or nolo contendere, or found not guilty by reason of insanity in the United States federal courts of a similar offense, or who has been convicted of, ~~adjudicated delinquent for,~~ pled guilty or nolo contendere, or found not guilty by reason of insanity to an offense for which the person was required to register in the state where the conviction or plea occurred, ~~shall be~~ is required to register pursuant to the provisions of this article. A person who has been found not guilty by reason of insanity ~~shall~~ must not be required to register pursuant to the provisions of this article unless and until the person is declared to no longer be insane or is ordered to register by the trial judge. A person who has been convicted, ~~adjudicated delinquent,~~ pled guilty or nolo contendere, or found not guilty by reason of insanity in any court in a foreign country may raise as a defense to a prosecution for failure to register that the offense in the foreign country was not equivalent to any offense in this State for which he would be required to register and may raise as a defense that the conviction, ~~adjudication,~~ plea, or finding in the foreign country was based on a proceeding or trial in which the person was not afforded the due process of law as guaranteed by the Constitution of the United States and this State.”

SECTION 3. Section 23‑3‑490(D) of the 1976 Code, as last amended by Act 7 of 2015, is further amended to read:

“(D)(1) For purposes of this article, information ~~on~~ about a ~~person~~ child adjudicated delinquent in family court for an offense listed in Section 23‑3‑430 must not be made available to the public ~~in accordance with the following provisions:~~, except as provided in items (2) and (3).

~~(1)~~ ~~If a person has been adjudicated delinquent for committing any of the following offenses, information must be made available to the public pursuant to subsections (A) and (B):~~

~~(a)~~ ~~criminal sexual conduct in the first degree (Section 16‑3‑652);~~

~~(b)~~ ~~Criminal sexual conduct in the second degree (Section 16‑3‑653);~~

~~(c)~~ ~~criminal sexual conduct with minors, first degree (Section 16‑3‑655(A));~~

~~(d)~~ ~~criminal sexual conduct with minors, second degree (Section 16‑3‑655(B));~~

~~(e)~~ ~~engaging a child for sexual performance (Section 16‑3‑810);~~

~~(f)~~ ~~producing, directing, or promoting sexual performance by a child (Section 16‑3‑820);~~

~~(g)~~ ~~kidnapping (Section 16‑3‑910); or~~

~~(h) trafficking in persons (Section 16‑3‑2020) except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense.~~

(2) Information ~~shall~~ only must be made available, upon request, to victims of or witnesses to the offense, public or private schools, ~~child day care centers, family day care centers,~~ childcare facilities, as defined in Section 63‑13‑20, or businesses or organizations that primarily serve children, women, or vulnerable adults, as defined in Section 43‑35‑10(11), ~~for persons adjudicated delinquent for committing any of the following offenses:~~

~~(a)~~ ~~criminal sexual conduct in the third degree (Section 16‑3‑654);~~

~~(b)~~ ~~criminal sexual conduct: assaults with intent to commit (Section 16‑3‑656);~~

~~(c)~~ ~~criminal sexual conduct with a minor: assaults with intent to commit (Section 16‑3‑656);~~

~~(d)~~ ~~criminal sexual conduct with minors, third degree (Section 16‑3‑655(C));~~

~~(e)~~ ~~peeping (Section 16‑17‑470);~~

~~(f)~~ ~~incest (Section 16‑15‑20);~~

~~(g)~~ ~~buggery (Section 16‑15‑120);~~

~~(h)~~ ~~violations of Article 3, Chapter 15 of Title 16 involving a minor, which violations are felonies; or~~

~~(i)~~ ~~indecent exposure.~~

~~(3)~~ ~~A person who is under twelve years of age at the time of his adjudication, conviction, guilty plea, or plea of nolo contendere for a first offense of any offense listed in Section 23‑3‑430(C) shall be required to register pursuant to the provisions of this chapter; however, the person’s name or any other information collected for the offender registry shall not be made available to the public.~~

~~(4)~~ ~~A person who is under twelve years of age at the time of his adjudication, conviction, guilty plea, or plea of nolo contendere for any offense listed in Section 23‑3‑430(C) and who has a prior adjudication, conviction, guilty plea, or plea of nolo contendere for any offense listed in Section 23‑3‑430(C) shall be required to register pursuant to the provisions of this chapter, and all registry information concerning that person shall be made available to the public pursuant to items (1) and (2).~~

~~(5)~~(3) Nothing in this section ~~shall prohibit~~ prohibits the dissemination of all registry information to law enforcement.”

SECTION 4. A. 1. Section 63‑3‑510(B) of the 1976 Code is amended to read:

“(B) Whenever the court has acquired the jurisdiction of ~~any~~ a child under seventeen years of age, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, but jurisdiction ~~shall~~ must terminate when the child attains the age of twenty‑one years; however, the family court shall retain jurisdiction for the purpose of reviewing a petition for removal from the sex offender registry of prior adjudication in the family court pursuant to Section 23‑3‑430. ~~Any~~ A child who has been adjudicated delinquent and placed on probation by the court remains under the authority of the court only until the expiration of the specified term of his probation. This specified term of probation may expire before but not after the eighteenth birthday of the child.”

2. The subsection takes effect upon approval by the Governor and is effective until July 1, 2019.

B. 1. Section 63‑3‑510(B) of the 1976 Code, as last amended by Act 268 of 2016, is further amended to read:

“(B) Whenever the court has acquired the jurisdiction of ~~any~~ a child under eighteen years of age, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, but jurisdiction ~~shall~~ must terminate when the child attains the age of twenty‑two years; however, the family court shall retain jurisdiction for the purpose of reviewing a petition for removal from the sex offender registry of prior adjudication in the family court pursuant to Section 23‑3‑430. ~~Any~~ A child who has been adjudicated delinquent and placed on probation by the court remains under the authority of the court only until the expiration of the specified term of his probation. This specified term of probation may expire before but not after the twentieth birthday of the child.”

2. This subsection takes effect July 1, 2019.

SECTION 5. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 6. This act takes effect upon approval by the Governor.

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